



Dated: _____

{W:\03946\100M242US4\00578266.DOC {00000000-0000-0000-0000-000000000000}}

publication on September 1, 2005 and deposited the same in an Express Mail envelope as evidenced by the label copy and log presented as part of the attached Exhibits.

Since Applicants complied with all governing rules and regulations and the abandonment arose through no part or error by the Applicants, abandonment of the present application is improper and based on the evidence presented herewith, the Notice of Abandonment should be withdrawn and the application should be passed to issue.

Since the alleged abandonment is improper and did not result from any action or lack of action by the Applicants, it is believed that no fee is due with the present request. If this is not the case, it is earnestly requested that the Examiner contact the undersigned.

Dated: November 22, 2005

Respectfully submitted,

By 

Edward J. Ellis

Registration No.: 40,389

DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(212) 527-7700

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Attorneys/Agents For Applicant



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Joel A. Osborne et al.

Application No.: 10/728,363

Confirmation No.: 6396

Filed: December 3, 2003

Art Unit: 3751

For: TAMPER EVIDENT SYRINGE TIP CAP AND
AUTOMATED METHOD FOR PREPARING
TAMPER-EVIDENT SYRINGES

Examiner: S. O. Douglas

DECLARATION OF DWIGHT B. PECK

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Dwight B. Peck, declare as follows:

1. I am employed as a Docketing Clerk at Darby & Darby, P.C. I make this declaration in support of the accompanying REQUEST FOR WITHDRAWAL OF NOTICE OF ABANDONMENT, which seeks the withdrawal of the NOTICE OF ABANDONMENT mailed on October 27, 2005, in the above-identified application.

2. A true copy of the Notice of Abandonment mailed October 27, 2005 is attached as Exhibit A. The Notice of Abandonment states that the applicant failed to timely pay the required issue fee and publication fee, and that no reply has been received.

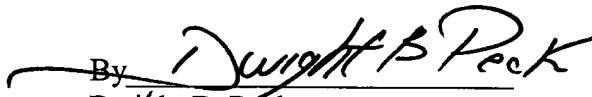
3. A true copy of the Issue Fee Transmittal submitted on September 1, 2005 is attached as Exhibit B. The Issue Fee Transmittal also includes an executed Certificate of Express Mailing Under 37 CFR 1.10 dated September 1, 2005, which includes my signature.

concluded that the originals of Exhibit B were timely filed on September 1, 2005, in accordance with normal procedures at Darby & Darby.

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful and false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: November 22, 2005

Respectfully submitted,

By 
Dwight B. Peck
Docketing Clerk
DARBY & DARBY P.C.
P.O. Box 5257
New York, New York 10150-5257
(212) 527-7700
(212) 527-7701 (Fax)



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/728,363 | 12/03/2003 | Joel A. Osborne | 03946/100M242-US4 | 6396 |

7278 7590 10/27/2005

DARBY & DARBY P.C.
P. O. BOX 5257
NEW YORK, NY 10150-5257

EXAMINER

DOUGLAS, STEVEN O

ART UNIT PAPER NUMBER

3751

DATE MAILED: 10/27/2005

TO: E.J. Ellis

ATTY REVIEWED

DATE:

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

10/728,363

Examiner

Douglas

Applicant(s)

Osborne

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☒ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

slk

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Attachment to Notice of Abandonment

For questions concerning the notice contact Office of Patent Publication

Image Assistance Center: 888-786-0101.

Information is also available on the USPTO Internet web site:
<http://www.uspto.gov/web/patents/pubs/abandonnotice.html>

Respond to the Notice of Abandonment by one of the following:

1. Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., a reply was in fact filed), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181 to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to 37 CFR § 1.8(b) Certificate of Mailing; 37 CFR § 1.10 "Express Mail" mailing or MPEP 503 Postcard Receipt as Prima Facie Evidence. The petition should be addressed as follows:

By mail: Mail Stop: Issue Fee, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
By facsimile: 703-872-9306

2. Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (MPEP 711.03(c) II and 37 CFR § 1.181). No fee required

Where an applicant contends that the original Notice of Allowance and Fee(s) Due was never received, if adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
By facsimile: 703-872-9306

3. Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) or (b) (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. The text of these rules is available on the USPTO Internet Web site. Forms for these petitions, "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a)," PTO/SB/61, and "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," PTO/SB/64, are available in the forms section of the USPTO website: <http://www.uspto.gov>.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Mail Stop Petition, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
By facsimile: 703-872-9306

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (703) 746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

7278

7590

DARBY & DARBY P.C.

P. O. BOX 5257

NEW YORK, NY 10150-5257

EXPRESS MAIL CERTIFICATE

Date 9/1/05 Label No. 91012719-US

I hereby certify that, on the date indicated above, this paper or fee was deposited with the U.S. Postal Service & that it was addressed for delivery to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 by Express Mail Post Office to Addressee service.

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (703) 746-4000, on the date indicated below.

(Depositor's name)

(Signature)

(Date)

Name (Print)

Signature

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/728,363 | 12/03/2003 | Joel A. Osborne | 03946/100M242-US4 | 6396 |

TITLE OF INVENTION: TAMPER EVIDENT SYRINGE TIP CAP AND AUTOMATED METHOD FOR PREPARING TAMPER-EVIDENT SYRINGES

| APPLN. TYPE | SMALL ENTITY | ISSUE FEE | PUBLICATION FEE | TOTAL FEE(S) DUE | DATE DUE |
|----------------|--------------|-----------|-----------------|------------------|------------|
| nonprovisional | YES | \$700 | \$300 | \$1000 | 09/06/2005 |

| EXAMINER | ART UNIT | CLASS-SUBCLASS |
|-------------------|----------|----------------|
| DOUGLAS, STEVEN O | 3751 | 141-027000 |

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively,

(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Darby & Darby

2

3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type) Rec. 8/18/04 R/F: 015693,0771

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

ForHealth Technologies, Inc.

Daytona Beach, Florida

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

☒ Issue Fee☒ Publication Fee (No small entity discount permitted)☐ Advance Order - # of Copies

4b. Payment of Fee(s):

☒ A check in the amount of the fee(s) is enclosed. \$1000.00☐ Payment by credit card. Form PTO-2038 is attached.☒ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 04-0100 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

☒ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature

Date

Typed or printed name Edward J. Ellis

Registration No. 40,389

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



Return of this card properly stamped, will acknowledge receipt
of: Transmittal of Issue Fee ~~\$1400.00~~ Publication Fee \$300.00
Check No. 9597 For \$1000.00

Applicant : Joel A. Osborne
Serial No. : 10/728,363
Filed: : 12/03/03
For : TAMPER EVIDENT SYRINGE TIP CAP
AND AUTOMATED METHOD FOR
PREPARING TAMPER-EVIDENT
SYRINGES

Attorney : Edward J. Ellis
File No. : 03946/100M242-Us4

Mailed : 9/1/05 Mailer: DBP
EV691012719-US

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|--|--|---|------|
| DARBY & DARBY P.C. PATENT OFFICE ACCOUNT 805 THIRD AVENUE NEW YORK, NY 10022 | | 1-852 210 43348074 | 9597 |
| COMMISSIONER OF PATENTS & TRADEMARKS | | DATE <u>9-1-05</u> | |
| PAY TO THE ORDER OF | | \$ <u>1000</u> ⁰⁰ / ₁₀₀ | |
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| citibank CITIBANK, N.A. BR. #852 153 EAST 53RD STREET NEW YORK, NY 10043 | | The Citigroup Private Bank | |
| MEMO <u>728,363/100M242US4</u> | | <u>Gabriella V. Karagi</u> | |
| ⑆021000089⑆ | | 43348074 9597 | |



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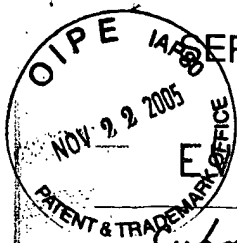
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| Date Accepted 9-1-05 | Scheduled Date of Delivery Month 9 Day 3 | Return Receipt Fee \$ | | Mo. Day | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | Employee Signature | |
| Mo. Day Year | Scheduled Time of Delivery <input checked="" type="checkbox"/> Noon <input type="checkbox"/> 3 PM | COD Fee \$ | Insurance Fee \$ | Delivery Attempt | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | Employee Signature | |
| Time Accepted 8:39 AM | Military <input type="checkbox"/> | Total Postage & Fees \$ 13.65 | | Mo. Day | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | Employee Signature | |
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SEPTEMBER 1 THURSDAY

2005 244th day - 121 days follow

EV691012696US 691012696-AF

Subramaniam 334,675 Amdt PMZ 03108 000M438

Verizon 074,586 BCE \$790 TB 03356 000K043

Verizon 074,585 BCE \$790 TB 03356 000K222

Hirano 906,359 BCE, Amdt. \$790 BTK 09634 000L255

EV691012705US 691012705-MP

Davies 046,223 NTC to INcomplete Reply JAD 00885 0202462

.Per. Nonsigning INV. CFR 1.47 \$130

Lundbeck 686,228 Compltn, sur + \$170 Ads AMZ 05432 0202902

Yahoo 125,809 Reg CFR FB 08226 1201265US1

Buckeye 192,670 Reg CFR FB 01313 1201674US2

G/b 531,097 Resp. copy of 8/4 Submission SPL 06727 0201248

EV691012719US 691012719-IF

Forhealth 728,363 Issue fee + pub \$1000 ETE 03946 100M242US4

AFT 218,761 Issue fee \$1400 ETE 03193 000E966

EV691012722US 691012722-PAT

IDS SB/08 ISR \$1460

Lundbeck A±V. spec. Ads, dec. Pre/ Amdt. MB 05432 100M507US1

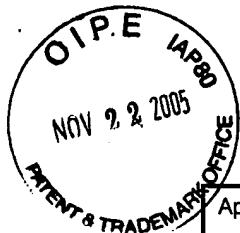
Sumitomo spec. Ads, dec. (8) dwgs. Pre/ Amdt.

(1) Repl shd dwg. Prio doc. IDS. (3) Refs, Assign MLC 20239 0202950

EV691012736US 691012736-PCR

Madarex Reg (6) shd. spec. dwg \$2098 STMT. Seq list. disk FB 04280 2201837W0

Shelston 78/263,499 Amdt. To basis of Appln ATB 20293 300K669



Application No. (if known): 10/728,363

Attorney Docket No.: 03946/100M242-US4

Certificate of Express Mailing Under 37 CFR 1.10

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Airbill No. _____ in an envelope addressed to:

EV 692135379-US

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on November 22, 2005
Date

B.W. Lee
Signature

B.W. LEE

Typed or printed name of person signing Certificate

Registration Number, if applicable _____

Telephone Number _____

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Request for Withdrawal of Notice of Abandonment (2 pages)
Declaration of Dwight Peck (3 pages)
Exhibits A-E
and Return Receipt Postcard.